The first answer submitted by counsel for the respondent was that it was sufficient for the plaintiff to show that the defendants knew that the structure was being put up without approval of a plan and specification, and that it was not necessary to show that the defendants knew that what they were doing was a breach of the Municipal Ordinance. The cases cited by counsel in support of his contention merely illustrated the proposition that ignorance of the law will not excuse a man from the penal consequences of a crime. In the present case, however, I was not concerned with the penal consequences of a crime but the circumstances in which the defendants could be deprived of the protection of the Control of Rent Ordinance. According to section 15(1)(h) of the Ordinance, the commission of a breach of a provision of the Municipal Ordinance was not enough: the breach had to be committed "knowingly". I accepted the above-cited interpretation of the word "knowingly" by Whitton J., and came to the conclusion that, before the defendants could be deprived of the protection of the Ordinance under section 15(1)(h), they must be proved to have known that they were committing a breach of the Municipal Ordinance at the time of their doing so.

The next answer submitted by counsel for the respondent was that every man is presumed to know the law and that the defendants must accordingly be presumed to have known that what they were doing was a breach of the Municipal Ordinance. I did not accept this submission, as I took the view that there is no presumption that every one knows the law, as was pointed out by Lord Atkin in *Evans* v. *Bartlam*[3].

The last answer submitted by counsel for the respondent was that there was evidence that the defendants knew that they were committing a breach of the Municipal Ordinance. The first portion of the evidence on which counsel relied was the evidence in cross-examination given by George Selva Nathan, a partner of the defendant firm, to the effect that he instructed his manager to demolish and replace the old structure with a new structure, that he did not find out whether he could do this without submitting a plan and specification for approval, that he did not submit a plan and specification, and that he knew what he was doing. This evidence did not, in my opinion, establish that the defendants knew that they were committing a breach of the Municipal Ordinance at the time they erected a building at the rear of the house.

The next portion of the evidence on which counsel relied was a letter dated the 10th February, 1958, sent by the defendants' solicitors to the plaintiff's solicitors in these terms:

"It is true that a City Council Notice was served on our clients, but we are to inform you that our clients did not erect a new plank-walled timber-framed and corrugated asbestos-roofed building at the rear of the premises as alleged by you. The timber-framed and corrugated asbestos-roofed building has been in existence for some time and all our clients did was to repair the same. In the circumstances our clients do not think that they have contravened section 144 of the Municipal Ordinance."

According to this letter, the defendants did not on the 10th February, 1958, consider that they had contravened section 144 of the Municipal Ordinance as alleged in the City Council notice dated the 16th December, 1957. In my opinion, it could not be inferred from this that the defendants were aware of the provisions of section 144 of the Municipal Ordinance at the time the building was erected, which was some time prior to the 1st October, 1957.

The last portion of the evidence on which counsel for the respondent relied was the following question put by defendants' counsel to the managing director of the plaintiff company in cross-examination on the 29th September, 1958:

"If the structure was a new structure, the defendant firm would have submitted plan and specifications to the City Council?".

In the light of the testimony of G. S. Nathan, a partner of the defendant firm, to the effect that he did not find out whether he could replace the old structure with a new structure without submitting a plan and specification for approval, the question put by defendants' counsel appeared to be based on the defendants' attitude as set out in their solicitors' letter of the 10th February, 1958, in regard to the City Council notice of the 16th December, 1957. In my opinion, it could not be inferred from this question that the defendants were aware of the provisions of section 144 of the Municipal Ordinance at the time the building was erected.

For the above reasons, I was of the opinion that there was no evidence that the defendants knew that they were committing a breach of the Municipal Ordinance at the time of their doing so.

In the circumstances, I allowed the appeal with costs.

Appeal allowed.

Solicitors: *Murphy, Dunbar & Chung*; *Braddell Bros.*

MACLAINE STOKVIS (MALAYA) LTD. v. THE SALOMA COMPANY

[O.C.J. (Syed Sheh Barakbah J.) April 28, 1959]

[Ipoh — Civil Suit No. 9 of 1959]

Practice and Procedure — Writ of Summons — Not signed by counsel — When a nullity — R.S.C., 1957, O.3 r.6 and O.19 r.4.

In this suit the defendants applied by way of Summons in Chambers for an order that the service of the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiffs' solicitors. The Statement of Claim was by way of a specially indorsed writ pursuant to O. 3 r. 6.

Held: the Writ in the present case was a nullity as it was not signed by counsel.

Cases referred to:—

(1) *Murray & Anor.* v. *Stephenson* (1887) 19 Q.B.D. 60.

(2) *Cassidy & Co.* v. *M'Aloon* 32 L.R. Ir. 368.

SUMMONS IN CHAMBERS

Yeoh Kian Teck for the plaintiffs.

P. P. Dharmananda for the defendants.

Syed Sheh Barakbah J.: In this suit there are two applications made by way of Summons in Chambers, one by the plaintiffs for leave to enter judgment and the other by the defendants for an order that the service of the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiffs' solicitors.

At the hearing I decided to deal with the defendants' application first.

Mr. Dharmananda, for the defendants, contended that the Statement of Claim must be signed by the solicitors and referred to O. 3 r. 6 of the Rules of the Supreme Court (Annual Practice 1957, page 18) where it is stated "The omission of the words 'Statement of Claim' at the head, and the signature at the end, as shown in the skeleton form of specially indorsed writ and required to a pleading by O. 19 r. 4, were held by the Irish C.A. to be fatal defects."

O.19 r.4 says, "Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; *but where pleadings have been settled by counsel or a special pleader they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person,*" and on page 338 of the Annual Practice 1957, it is stated that a pleading not signed is not a pleading "delivered" within the meaning of the Rule, so if an unsigned statement of claim is delivered, it is a mere nullity, and if there is an apparent default in delivery of defence, the plaintiff will sign judgment in default at his own risk. A pleading includes a statement of claim — O.71 r.1(10). According to O.28 r.1, a special indorsement is really a statement of claim and the practice with reference to the amendment of pleadings therefore applies to it.

Mr. Yeoh argued that a specially indorsed writ is not a pleading on the authority of *Murray & anor.* v. *Stephenson,*[1] and therefore O. 19 r. 4 does not apply. But what that case decided was that it was not a pleading within the meaning of O. 64 r. 11 in so far as it relates to the time of service, but the issue before me is whether or not the writ should be signed by counsel. On this latter point the Irish Court of Appeal in *Cassidy & Co.* v. *M'Aloon,*[2] has held that the omission of the signature of counsel was a fatal defect. I am inclined to agree with that decision and hold that the writ in the present case is a nullity as it was not signed by counsel.

The Writ of Summons is set aside without prejudice to the plaintiffs bringing fresh action. No order as to costs.

Application allowed.

Solicitors: *Gibb & Co.; Cheang, Lee & Ong.*

CHEANG CHAN as CHAIRMAN OF PERAK KWONG SAI ASSOCIATION v. LEE KIN KOK

[O.C.J. (Neal J.) August 22, 1959]

[Ipoh — Civil Suit No. 142 of 1959]

Practice and Procedure — Writ of Summons — Not signed by counsel — When not a nullity — R.S.C. 1957 O.2 r.1, O.3 r.1 and O.19 r.4.

In this suit the defendant applied by way of Summons in Chambers for an order that the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiff's solicitors. The Writ was a Writ under O. 2 r. 1 with a statement of the nature of the claim endorsed and purported to have been signed by the plaintiff.

Held: the writ issued in this case was not in breach of O. 19 r. 4 and complied with the Rules of the Supreme Court.

Cassidy & Co. v. *M'Aloon* and *Maclaine Stokvis (Malaya) Ltd.* v. *Saloma Co.*[1] distinguished.

Cases referred to:—

(1) *Maclaine Stokvis (Malaya) Ltd.* v. *Saloma Co.* [1959] M.L.J. 241.

(2) *Cassidy & Co.* v. *M'Aloon* 32 L.R. Ir. 368.

(3) *Anlaby & Ors.* v. *Praetorius* 20 Q.B.D. 764.

(4) *Murray* v. *Stephenson* 19 Q.B.D. 60.

SUMMONS IN CHAMBERS.

Khong Kok Yat for the plaintiff.

Yeoh Kian Teck for the defendant.

Neal J.: A Summons in Chambers in the suit for an order that the Writ of Summons herein and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiff's solicitors and that the plaintiff do pay to the defendant the costs of and occasioned by this application, was heard before me in Chambers on the 17th August.

Mr. Yeo Kian Teck, appearing in support of the Summons, argued that the judgment of Mr. Justice Syed Sheh Barakbah in *Maclaine Stokvis (Malaya) Ltd.* v. *The Saloma Company*[1] (Civil Suit No. 9 of 1959) was authority for his submission that the service must be set aside as the plaintiff had not complied with the mandatory provisions of O. 19 r. 4 as regards signature of the endorsement by the solicitors on record such endorsement being signed by the plaintiff in person.